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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 4315

13 **ALEXANDER MONDRAGON OGATA**
11525 McDonald Street
14 Culver City, CA 90230

A C C U S A T I O N

15 Pharmacy Technician Registration No. TCH 110767

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).

21 2. On or about March 18, 2011, the Board issued Pharmacy Technician Registration No.
22 TCH 110767 to Alexander Mondragon Ogata (Respondent). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 will expire on September 30, 2014, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code (Code) unless otherwise indicated.

1 4. Section 4300(a) of the Code states that “[e]very license issued may be suspended or
2 revoked.”

3 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
4 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
5 disciplinary action during the period within which the license may be renewed, restored, reissued
6 or reinstated.

7 **STATUTORY AND REGULATORY PROVISIONS**

8 6. Section 482 of the Code states:

9 “Each board under the provisions of this code shall develop criteria to evaluate the
10 rehabilitation of a person when:

11 “(a) Considering the denial of a license by the board under Section 480; or

12 “(b) Considering suspension or revocation of a license under Section 490.

13 “Each board shall take into account all competent evidence of rehabilitation furnished by
14 the applicant or licensee.”

15 7. Section 4001.1 states:

16 “Protection of the public shall be the highest priority for the California State Board of
17 Pharmacy in exercising its licensing, regulatory, and disciplinary functions. Whenever the
18 protection of the public is inconsistent with other interests sought to be promoted, the protection
19 of the public shall be paramount.”

20 8. Section 4301 of the Code states:

21 The board shall take action against any holder of a license who is guilty of
22 unprofessional conduct or whose license has been procured by fraud or
23 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
24 not limited to, any of the following:

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25 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
26 deceit, or corruption, whether the act is committed in the course of relations as a
27 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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1 (h) The administering to oneself, of any controlled substance, or the use of any
2 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
3 dangerous or injurious to oneself, to a person holding a license under this chapter, or
4 to any other person or to the public, or to the extent that the use impairs the ability of
5 the person to conduct with safety to the public the practice authorized by the license.

6

7 (j) The violation of any of the statutes of this state or of the United States
8 regulating controlled substances and dangerous drugs.

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10 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
11 abetting the violation of or conspiring to violate any provision or term of this chapter
12 or of the applicable federal and state laws and regulations governing pharmacy,
13 including regulations established by the board or by another state or federal
14 regulatory agency.

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16 9. Section 4022 of the Code states

17 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
18 self-use in humans or animals, and includes the following:

19 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
20 without prescription," "Rx only," or words of similar import.

21 (b) Any device that bears the statement: "Caution: federal law restricts this
22 device to sale by or on the order of a _____," "Rx only," or words of similar
23 import, the blank to be filled in with the designation of the practitioner licensed to use
24 or order use of the device.

25 (c) Any other drug or device that by federal or state law can be lawfully
26 dispensed only on prescription or furnished pursuant to Section 4006.

27 10. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
28 drug or dangerous device except upon the prescription of an authorized prescriber.

11. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a
person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or
furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to
Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician
assistant pursuant to Section 3502.1. This section shall not apply to the possession of
any controlled substance by a manufacturer, wholesaler, pharmacy, physician,
podiatrist, dentist, veterinarian, certified nurse-midwife, nurse practitioner, or
physician assistant, when in stock in containers correctly labeled with the name and
address of the supplier or producer.

1 Nothing in this section authorizes a certified nurse-midwife, a nurse
2 practitioner, or a physician assistant to order his or her own stock of dangerous drugs
3 and devices.

4 12. Health and Safety Code section 11170 provides that "No person shall prescribe,
5 administer, or furnish a controlled substance for himself."

6 13. Health and Safety Code section 11171 provides that "No person shall prescribe,
7 administer, or furnish a controlled substance except under the conditions and in the manner
8 provided by this division."

9 14. Health and Safety Code section 11550, subdivision (a), in pertinent part, makes it
10 unlawful for any person to use or be under the influence of any controlled substance.

11 15. California Code of Regulations, title 16, section 1769, states:

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13 (b) When considering the suspension or revocation of a facility or a personal
14 license on the ground that the licensee or the registrant has been convicted of a crime,
15 the board, in evaluating the rehabilitation of such person and his present eligibility for
a license will consider the following criteria:

16 (1) Nature and severity of the act(s) or offense(s).

17 (2) Total criminal record.

18 (3) The time that has elapsed since commission of the act(s) or offense(s).

19 (4) Whether the licensee has complied with all terms of parole, probation,
20 restitution or any other sanctions lawfully imposed against the licensee.

21 (5) Evidence, if any, of rehabilitation submitted by the licensee.

22 16. California Code of Regulations, title 16, section 1770, states:

23 For the purpose of denial, suspension, or revocation of a personal or facility
24 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
25 Professions Code, a crime or act shall be considered substantially related to the
26 qualifications, functions or duties of a licensee or registrant if to a substantial degree
27 it evidences present or potential unfitness of a licensee or registrant to perform the
28 functions authorized by his license or registration in a manner consistent with the
public health, safety, or welfare.

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CONTROLLED SUBSTANCE/DANGEROUS DRUG

17. Section 4021 of the Code states:

“‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section 1153) of Division 10 of the Health and Safety Code.”

18. Section 4022 of the Code states, in pertinent part:

“‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use, except veterinary drugs that are labeled as such, and including the following:

“(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without prescription,’ ‘Rx only,’ or words of similar import.

....

“(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.”

19. Cocaine (and any Cocaine base) is a narcotic drug according to Health and Safety Code section 11019, subdivision (e). It is a Schedule I controlled substance, as designated in Health and Safety Code section 11054, subdivision (f)(1), and a Schedule II controlled substance, as designated in Health and Safety Code section 11055, subdivision (b)(6). It is categorized as a dangerous drug according to Code section 4022.

COST RECOVERY

20. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTUAL BACKGROUND

21. On or about April 21, 2011, officers from the Culver City Police Department responded to a report of a suspicious subject in the area of Stevens Avenue, in Culver City, California. Upon arrival, the officers contacted Respondent and he was positively identified by a homeowner as the suspicious individual that ran from her back yard. Officer Victor was speaking

1 with Respondent, when he spontaneously stated, "I was just walking through the bushes because I
2 was trying to find my bike." Respondent went on to state that he could not recall where he left
3 his bicycle and was trying to find any bicycle that he could use to go back home.

4 22. Upon further questioning by the officers, they noticed that Respondent was displaying
5 objective signs of being under the influence of a controlled substance. In observing Respondent's
6 behavior, the officers noted that: 1). Respondent's speech was rapid and he constantly licked his
7 lips as if his mouth was dry; 2). Respondent was continuously shifting his body weight from side
8 to side as he stood talking to the officers; 3). Respondent had beads of sweat pouring down his
9 forehead despite the cool weather; 4). Respondent's pulse measured approximately 125 beats per
10 minute; and 5). During the administration of the Rhomberg stand test, Respondent's eyelids
11 fluttered rapidly while closed, a symptom often referred to as "eyelid tremors." Respondent
12 closed his eyes and estimated 30 seconds in what was actually 25 seconds. Officer Grant asked
13 Respondent when was the last time he used drugs. Respondent stated, "I used cocaine about three
14 hours ago." Based on the objective symptoms displayed by Respondent, coupled with his
15 statements, Officer Victor formed the opinion that Respondent was under the influence of a
16 controlled substance, to wit, a stimulant.

17 23. Upon further questioning of the reporting homeowners, the officers determined that
18 Respondent stole a red 18-speed "Roadmaster" bicycle worth approximately \$200. Respondent
19 stated that he had been drinking with a friend that lives on Stevens Avenue the night before the
20 incident. Respondent explained that he could not remember where he left his bicycle the night
21 before, so he decided to look in the backyards of nearby houses for his bicycle. Respondent went
22 on to state that because he could not find his own bicycle, he took the victim's red bicycle in
23 order for him to get home. Respondent was placed under private person's arrest for violating
24 Penal Code section 484, subdivision (a).

25 24. Upon arrival at the Culver City Police Department, Officer Victor conducted a
26 secondary examination of Respondent under controlled lighting to determine if he was under the
27 influence of a controlled substance. Officer Victor applied the outer beam of his handheld
28 flashlight to Respondent's eyes and noticed that they measured approximately 6.5 mm to 7.0 mm

1 and had little to no reaction to the application of light. Respondent closed his eyes and estimated
2 30 seconds to himself, in what was actually 20 seconds. Respondent's pulse measured
3 approximately 140 beats per minute. Respondent submitted to a urine screening test to determine
4 the presence of controlled substances. On May 5, 2011, the screen test results of Respondent's
5 submitted urine sample indicated the presence of amphetamines, cannabinoids, and cocaine.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct – Self-Administration of Controlled Substance(s))**

8 25. Respondent is subject to disciplinary action under Code section 4301, subdivision (h)
9 and/or Code section 4301, subdivisions (j) and/or (o), in conjunction with Health and Safety Code
10 section 11170, in that Respondent administered controlled substance(s) to himself. Complainant
11 refers to and by this reference incorporates the allegations set forth above in paragraphs 21
12 through 24, inclusive, as though set forth fully.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct – Furnishing of Controlled Substance(s))**

15 26. Respondent is subject to disciplinary action under Code section 4301, subdivisions (j)
16 and/or (o), and/or Code section 4059, in conjunction with Health and Safety Code section 11170,
17 in that Respondent furnished to himself or another without a valid prescription, and/or conspired
18 to furnish, and/or assisted or abetted furnishing of, controlled substance(s). Complainant refers to
19 and by this reference incorporates the allegations set forth above in paragraphs 21 through 24,
20 inclusive, as though set forth fully.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct – Use/Influence of Controlled Substance(s))**

23 27. Respondent is subject to disciplinary action under Code section 4301, subdivisions (j)
24 and/or (o), in conjunction with Health and Safety Code section 11550, in that Respondent used
25 and/or was under the influence of, conspired to use/be under the influence of, and/or assisted in or
26 abetted use/being under the influence of, controlled substance(s). Complainant refers to and by
27 this reference incorporates the allegations set forth above in paragraphs 21 through 24, inclusive,
28 as though set forth fully.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

3 28. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
4 on the grounds of unprofessional conduct, in that Respondent committed acts involving moral
5 turpitude, dishonesty, fraud, deceit, or corruption. Complainant refers to and by this reference
6 incorporates the allegations set forth above in paragraphs 20 through 23, inclusive, as though set
7 forth fully.

8 **PRAYER**

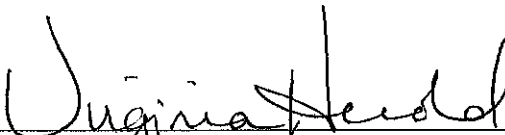
9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board of Pharmacy issue a decision:

11 1. Revoking or suspending Pharmacy Technician Registration Number TCH 110767,
12 issued to Alexander Mondragon Ogata;

13 2. Ordering Alexander Mondragon Ogata to pay the Board of Pharmacy the reasonable
14 costs of the investigation and enforcement of this case, pursuant to Business and Professions
15 Code section 125.3;

16 3. Taking such other and further action as deemed necessary and proper.

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18 DATED: 12/12/13



19 VIRGINIA HEROLD
20 Executive Officer
21 Board of Pharmacy
22 Department of Consumer Affairs
23 State of California
24 Complainant
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